Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
America's Carriers Telecommunication Association ("ACTA")	**RM-8775**
Petition for Declaratory Ruling, Special Relief and Institution of Rulemaking	

RESPONSE OF MFS COMMUNICATIONS COMPANY, INC.

MFS Communications Company, Inc., by its undersigned counsel and pursuant to Section 1.405 of the Commission's Rules, hereby submits its response to the Petition for Declaratory Ruling, Special Relief and Institution of Rulemaking of America's Carriers Telecommunications Association ("Petition"). ACTA's Petition requests, *inter alia*, that the Commission issue a declaratory ruling confirming its authority over interstate and international telecommunications services using the Internet and asks that the Commission institute a rulemaking governing the use of the Internet for providing telecommunications services.[1/]

[1/] *See* Petition for Declaratory Ruling, Special Relief, and Institution of Rulemaking of the America's Carriers Telecommunications Association, filed March 4, 1996.

I. INTRODUCTION AND SUMMARY

- In light of rapidly evolving technology, ACTA's petition raises interesting issues regarding whether the provision of certain services are "telecommunications services."

- Without addressing whether the Internet is a "telecommunications service," or whether Internet service providers ("ISPs") are "telecommunications carriers," the Telecommunications Act of 1996 ("1996 Act") clearly did not intend that the RBOCs be allowed to circumvent statutory restrictions or avoid obligations by providing regulated telecommunications services over the Internet.

- In any instance, contrary to ACTA's assertions, publishers of Internet software are not "telecommunications carriers" and should not be regulated as such under the Communications Act.

II. DISCUSSION

A. *The FCC Must Ensure That Dominant, Incumbent LECs Do Not Exploit the New Technologies of the Internet to Avoid Statutory Obligations Under the 1996 Act.*

ACTA asks the Commission to institute a rulemaking "to govern the use of the Internet for providing telecommunications services."[2/] The Petition further asserts that the Commission should regulate the Internet because it is "a unique form of wire communication,"[3/] and that certain software providers utilizing the Internet are "purveyors of . . . long distance service."[4/]

MFS recognizes that the Internet and the services provided over the Internet are rapidly evolving. Two-way voice and video services are exciting new applications that are now being offered to end-users via the Internet. Of course, over time these products will be refined and, as

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2/ *See* Petition at i.

3/ *See Id.* at 5.

4/ *Id.* at 6.

bandwidth increases and compression algorithms improve, the services offered over "the Internet" may become indistinguishable from the services and the quality of service rendered over existing telephone and cable networks. MFS submits that as the RBOCs, cable companies, and major long distance companies begin to provide Internet services over their networks, these telephone, and video providers' networks may begin to fall within the scope of what we today consider "the Internet."

Accordingly, the Commission must ensure that the RBOCs and other dominant, incumbent LECs are not allowed to avoid restrictions or skirt their obligations under the 1996 Act by exploiting "the Internet" to provide regulated interLATA or other services before meeting statutory requirements. As the Commission itself noted in its recent NPRM concerning interconnection, "incumbent LECs . . . possess an approximate 99.7 percent share of the local market as measured by revenues."[5/] It is this same monopoly power that Congress feared would inhibit the development of competition in local telecommunications markets. Therefore, Congress, among other things, directed the FCC to restrict the RBOCs from entering the long distance market until they meet a detailed 14-point checklist, public interest test, receive a recommendation from the Department of Justice, and face actual facilities-based competition in the markets they wish to offer long distance service.

Specifically, Congress stipulated its goals of the Act as follows:

> The bill seeks to assure that no competitor, no business and no technology may use its existing market strength to gain an advantage on the competition. The legislation requires that a company or group

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5/ *See* Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-88, ¶ 6 (April 19, 1996).

> of companies satisfy certain competitive tests before being able to offer a new service or enter a new market. Entry into new services and new areas is contingent upon a demonstration that competition exists in the market in which the business currently competes . . . These fundamental features of the conference report on S. 652 are designed to create a level playing field where every player will be able to compete on the basis of price, quality, and service, rather than on the basis of monopoly control of the market.

142 Cong. Rec. S710 (daily ed. Feb 1, 1996) (statement of Sen. Kerry). Certainly if RBOCs are able to offer in-region interLATA services over the Internet before meeting the detailed statutory test, Congress' goal of creating a "level playing field" would be thwarted.

B. *The FCC Should Not Regulate Software Publishers Because They Are Not Telecommunications Carriers Under the 1996 Act.*

The ACTA Petition also asserts that publishers of Internet telephony software must be considered "telecommunications carriers" subject to the Commission's jurisdiction. Under the plain language of the Act, however, ACTA's reasoning fails.

In order to be classified as a "telecommunications carrier" under the Communications Act, software providers would have to engage in the provision of telecommunications and thereby: (1) transmit information "between or among points specified by the user," (2) transmit "information of the user's choosing," and (3) transmit such information "without change in the form or content of the information as sent and received."

Contrary to ACTA's assertions, software providers clearly fail to satisfy these conditions. First, software providers do not engage in the transmission of information between or among points specified by the user. In order to transmit information, the customer must first obtain transmission facilities from a carrier.

Second, software products are not "telecommunications" because they do not necessarily transmit information only of the user's choosing. For example, some software input and output may be generated randomly by the host computer or a connected unit.

Third, software does not perform "telecommunications" because it does not necessarily transmit information without a change in the form or content of the information as sent or received. Frequently, software will encode or *reformat* information during input or in preparation for transmission. For example, word processing software frequently translates the user's keystrokes into one of many public or proprietary formats. Similarly, computer facsimile software must convert and reformat text into bitmap images before transmitting data.

Accordingly, because software providers do not offer "telecommunications," and can not be considered to be either "telecommunications services" or "telecommunications carriers" under the Communications Act, there is no basis for ACTA's assertion that the FCC may assert jurisdiction over certain software manufacturers.

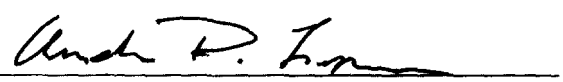
III. CONCLUSION

MFS recognizes that the Internet and the services provided over the Internet are rapidly evolving and should be reviewed by the Commission. Specifically, the Commission should ensure that the RBOCs and other dominant, incumbent LECs do not exploit the rapidly developing technology of the Internet to skirt statutory obligations and restrictions intended to promote competition in telecommunications markets. The Telecommunications Act of 1996 makes clear that entry into new services and new areas by existing incumbent monopoly providers is contingent upon a demonstration that competition exists in the market in which the carrier currently competes.

Incumbent LECs should not be able to exploit Internet technology to thwart this fundamental feature of the 1996 Act. Finally, under the plain language of the Act, publishers of Internet software do not meet the definition of "telecommunications carriers" and therefore should not be regulated by the FCC as such.

Respectfully submitted,

MFS COMMUNICATIONS COMPANY, INC.



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